O/Insurance/52

1952 K File No. 28/52

Legal Dept-
G: BRANCH

Subject:— Opinion on the Indian Insurance Act 1952

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O/Insurance/52

File No. 28/52

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C O N T E N T S.

Legal Department File No. O. Insurance/1952.

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2	G.-183 30-4-1952.	Question (1) Whether Government would be entitled to the amounts mentioned in the Insurance policies and nothing more or less or whether the Government can claim compensation from the Insurance Company on the basis of the insurable value of the cargo, on payment of the additional premium; and (2) If the Insurance Company is liable only on the basis of the insured value of the cargo as specified in the Insurance Policies, whether Transport Contractors Messrs. Lotus Line Limited, could be held responsible for the under insurance of the cargo.	7-10
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Legal Department

In R.L.A.'s opinion No.6-186, dated the 7th June 1950 while considering the liability of the Bombay Steam Navigation Company under clause 13 of the agreement to make good Government all the losses caused by wilful damage, R.L.A. had remarked as follows:-

"As regards the wilful damage the Tindals explanation for taking 10 to 15 days to reach Raydanda when the journey would ordinarily take not more than 8 hours should be called for. His explation as to how he developed the leak may also be called for. As there is no evidence of the whether being bad, the natural inferance is that the craft was not sound and completly seaworthy. The Bombay Steam Navigation Company therefore seems prima facie responsible for the loss; but before holding them responsible further information on the points considered in this paregraph may be obtained." After receipt of that opinion the Director of Civil Supplies (Accounts) again wrote to the Bombay Steam Navigation Company requesting them to accept the liability and pay up the loss incurred by Government to the extent of Rs. 29,002-1-6 on the ground that in the absence of any evidence of the whether being bad, the natural inference was that the craft was unsound and unseaworthy or that there was foul play of the tindel. The Bombay - Steam Navigation Company replied to the Director of Civel Supplies (Accounts) to the effect that the burden of proving that the craft was unsound or that there was foul play by the tindel was on the party alleging it and that if the craft was unseaworthy it would not have sailed such a distance as Revdanda from Bombay with the cargo loaded in it. The Company also did not accept the allegation regarding the foul play by the tindel. Thereafter the papers were referred to the Ploice for further investigation. The report of the police offiecer is at p. 53 ante. The Police Officer says that the statement of the tindel Datta Yeshwant of country craft 'St. Antony' that he did not sail from 1st May 1947 to 9th May 1947 from Bombay harbour due to unfavourable wind appears to be false. The Statements of tindels of other country crafts who sailed during that period show that the whether was good. The report of

of Deputy Conservator, Port Trust, Bombay, also shows that the weather was normal and seaworthy during the relevant period. The other crafts excepting St. Antony sailed on the same day. There is also a material contradiction regarding low the leek developed. ~~The~~ In his protest note Tindel Datta Yeshwant says that he found his anchor stuck in the rock and due to tugging at the anchor the bottom of the craft broke and water started coming in and the cord of the anchor had to be cut. In his statement before the police now he says that while tugging the anchor it stuck in a rock and the cord broke and the leaks must have been devlloped because the craft dashed against the rock. From the statement of R. H. Joshi who was then the Rangee Officer, Revenda it appears that the weather at the material time was not stormy, the Tindel's ~~xxxx

"Valued policies may form an exception to the general principle that a contract of insurance is a contract of indemnity; for under such policy the assured may in fact recover more than his actual loss. A policy of insurance is not a perfect contract of indemnity. It must be taken with this qualification, that the parties may agree before hand in estimating the value of the subject assured by way of liquidated damages (Irving vs. Manning (1847) 1 H.L. Cas - 287)" (Insurance Law and Practice in India by Singh p.82).

In this case the valuation in the policy will have to be taken as binding between the Insurance Company and the policy holder. The valuation in a valid policy is conclusive. Over valuation should be taken as binding if the transaction is bonafide and there is no evidence of fraud or of intention to make a wagering policy (see p. 82 ibid). Only in case of partial loss, the valuation has no effect and the insured must prove the actual amount of his loss (ibid)

Hence in this case, presuming that the loss is total, the Insurance Company would be responsible to pay the value of the cargo as specified in the policy irrespective of whether it is overvalued or undervalued. Government will not be able to claim the full value of the goods in respect of the two undervalued policies by now paying additional premiums.

As stated above Messrs. Lotus Line Limited would be responsible for the loss caused to Government by undervaluation of cargo in respect of country crafts Salamati and Alimadat. If however Government succeeds in recovering Rs. 53,667-12-0 the full insured value from the Insurance Company, then it would be equitable to recover from Messrs. Lotus Line Limited the difference between Rs. 60,065-12-0 viz., the value of the goods and Rs. 53,667-12-0 the sum stated in the four policies and give them the advantage in respect of overvalued policies.

Even though the policies are in the name of the Food Controller and not Government, any objection taken in respec

of these policies under section 175(3) of the Government of India Act can be met by the argument that the agreement under which the policies were issued was between the Governor of Bombay and the Insurance Company.

Id/- .....
30/4

Remembrancer of Legal Affairs.

U.R. to D.C.S. (Accounts), No. G-183, dated the 30th April 1952.

SSD.
17.7.1956. 4c.

Statement of Facts.

In 1946-47, Government was sending considerable quantities of foodgrains by country crafts to various places in the Province. The Bombay Steam Navigation Company, Limited, was the transport agent of Government for these shipments and one Shri Laxmidas Ramji was acting as the representative of the Bombay Steam Navigation Company. Government decided to effect insurance on these consignments and quotations were invited from the Insurenee Companies.

In response to this invitation only three Companies quoted their rates and Messrs. Vishwabharati Insurance Company was one of them. It should be noted that this tender was not received direct from the Insurance Company but it was submitted by Messrs. Bombay Steam Natigation Company, Limited, who in their letter dated the 14th September 1946 wrote to the Chief Accounts Officer as follows :-

> "With reference to your letter dated 28th ultimo inviting lowest quotations for premia rates for the above insrance, we have to advise you that we shall be prepared to arrange for the insurance of the above cargo on your account with Messrs. Vishwabharati Insurance Company, Limited, and the rates for such insurance will be as under....
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> xxxxxx x x x x
>
> x x x x x x x x
>
> The above rates are for insurance under usual country craft cover of F.P.A. and jettisoning.
>
> It will be appreciated that the rates quoted by us are fairly dcompetitee and have been so indicated so that the entire work in connection with this insurance would be entrusted to us. We shall feel obliged if you will kindly favour us with the cent per eent. insurance of Government cargoes transported by country craft during the ensuing season."

Government found that the terms quoted on behalf Messrs. Vishwabharati Insurance Company were competitive and decided to accept the tender. On 3rd October 1946, a letter was accordingly addressed to the Bombay Steam Nagivation Company communicating the acceptance and the Company was requested to forward a letter of acceptance from the Insurance Company.

The Insurance Company duly accepted and by its letter dated the 8th November 1946 informed the Chief Accounts Officer that they were agreeable to the insurance at the rates indicated and

and communicated by the Bombay Steam Navigation Company and they further informed:-

"We have further to advise you that we have appointed Shri Laxmidas Ramji as our Chief Agent to accept all these insurances of Government foodgrains by country crafts for the season 1946-47 and we have authorised him to sign and execute the policies, cover notes etc., as also to receive insurance premia on our behalf."

In the course of the season, it was noticed that Insurance Company did not meet a single claim of Government as and when communicated to them. Government therefore, forwarded a statement of outstanding claims to the Company on 4th Septmener 1948 and after a reminder got a reply that the matter was being looked into. The amount of total claim communicated at that time was Rs.57.762-4-8.

While these claims were outstanding in Feburery 1949, Shri, Laxmidas Ramji Presented a bill to Government amounting to Rs. -- 42,196-5-0 in respect of insurance premia. As there were outstanding claims against the Insurance Company, Government asked Shir Laxmidas to adjust the claims and to remit the balance.

The claims were, however, not settled and when the Insurance Company was approached, it instited upon prior payment of the premia due. Government, however, hesitated to pay the premia as the Grain Purchase Officer, who had also insured with the Company and had paid all his premia had not been able to get a settlement of his claim against the Company amounting to Rs. 84,023-8-6. As the company was not meeting that claim, benafides of the Company were doubted.

The Company was not, however, directly repudiating the claim. In their letter dated the 17th May 1949, the Company expressed its anxiety to finalise the matter and requested the Director of Civil Supplies (Accounts) to furnish the necessary documents in support of the claims. In a further correspondence on the 20th May 1949, the Company requested payment of the outstanding premia and in a still further letter of 14th June, the Company requested payment of premia and furnishing of the necessary documents. In reply to this, the Company was informed that the Bombay Steam Navigation Company and the District Magistrate had supplied the necessary documents and that they were making

making complaints that the Company was not replying. The Company was also asked to settle the claims and remit the amount without any delay.

As no settlement was arrived at the Civil Supplies Department addressed a letter to the Superintendent of Insurance for help in the matter. The Company informed the Superintendent that necessaty documents were not supplied to them and their premis were also not paid and hence they could not settle the claims. This information was passed on by the Superitandent to the Civel Supplies Department.

It appears that at that time some documents were [illegible] lying with the Bombat Steam Navigation Company and these were obtained and forwarded to the Insurance Company. The Company thereupon wrote to Government vide their letter No. M/1279/49, dated 15-11-49 saying that they would settle their claim provided their premia were paid. Government being suspicious of the bonafides of the Company, paid a sum of Rs. 333-4-0 in respect of a few items and requested the compan y to aettle the claim in respect of those items only. This was done as a test case. The Company, however, informed that the amount had been credited to Government account and requested payment of the balance.

Government's claims are thus outstanding for a considereble time. The Civil Supplies Department is suspicious about the bonafides of the company and as the claims against the Company are larger than the amount of the premia due the question for consideration is whether a suit should be filed against the Company for relaization of the amount.

It is seen from the District Magistrate, Ratnagiri's letter No. MDR/AC/SR-3, dated the 3rd October 1950, that the claims in respect of thsee despatches a were not preferred within 40 days from the date of the despatch but the insurance policies in respect of these despatches except the despatch at item No. 5, were issued several months after the consignment was actually despatched and received. It is not known how this fact will affect the merits of the case. It may be noted, however, that in a recently reported decistion in Ramji Karamsi Vs. The Unique

Motor and General Insurance Insurance Company, Limited 52 Bom. L.R.703, it has been held that the condition in the policy of insurance that the claim should be made and proved within forty days of its date was not a condition precident and meant only that the claim should be made with all reasonable and due diligence. This decision is favourable to Government and the mere fact that the claim was not proved within 40 days may not invalidate Governments's claim. Moreover, the Insurance Company has admitted Government's claim to the extent of Rs. 15,120-4-6, thus leaving a balance of Rs. 42,642-0-2. The Necessary documents were supplied after a lapse of 40 days except in one case.

It appears that the delay in furnishing the documents was due to the fact that Shri Laxmidas Ramji who was a common representative both as far as Insurance Company as well as the Transporters were concerned, neither furnished Government with the required documents nor did he submit them to the Insurance Company.

The case was referred to Messrs. Little and Company, Solicitors to Government, Bombay for opinion. Messrs. Little and Company in their letter, dated 16th October 1951, have held that in the circumstances of this case the strict interpretation of the condition in the Insurance policy, requiring the admission and proff of the claims within 40 days of the date thereof, as laid down by the Bombay High Court in the case of Ramji Karamsi Vs. The Unique Motor and General Insurance Co., Ltd., 52 B.L.R. 703 would not apply to this case and that even if it would apply to this case, the said condition may well be said to have been waived by the Vishwabharati Insurance Company's letters, dated the 17th and 20th May 1949 to the Director of Civil Supplies (Accounts) (Vide slips A and B in File III below) wherein the Insurers asked for documents in support of these claims. Messrs. Little and Company have advised that Government should file a suit against the Insurers. However, as the matter is complicated the Advocate General is requested to express his opinion.

SSD.
17.7.1956.

No. G-141

Legal Department,

Bombay Castle (Bombay No.1), 1st April 1952.

To

The Advocate General,
High Court,
Bombay.

Subject:- Claims by Government against the Vishwabharati Insurance Company.

Sir,

I have the honour to forward herewith a 'statement of facts' of the case on the subject noted above and to request you to express your opinion as to the advisability of filing a suit against the Vishwabharati - Insurance Company.

Papers of the case in five files accompany.

Yours faithfully,

Id/- .....

Secretary to Government.

SSD.
17.7.1956. 4c.

ADVOCATE GENERAL's CHAMBERS

HIGH COURT,

BOMBAY, 17th JUNE, 1952.

SUBJECT: CLAIMS BY GOVERNMENT AGAISST THE VISHWABHARATI INSURANCE CO.

It appears from the Insurance Company's letter dated 8th November, 1946, to the Chief Accounts Officer that the Insurance Company was agreeable to insure the Government's Foodgrain during 1946-1947 season at the rates indicated in the said letter and also communicated by the Bombay Steam Navigation Company Ltd. to the Government. The policies of Insurance contain the clause that "no claim will be admitted unless properly made and proved within 40 days from the date hereof." In the letter of the Dist. Magistrate, Ratnagiri, dated 3rd October, 1950, it is stated that in respect of 5 out of 6 claims notices were sent to the Insurance company preferring the claim within 40 days from the date of the insurance policies. But it seems that all the documents in respect of the said claims were not sent to the insurance company and the claims were not proved as required by the Insurance company within the period of 40 days from the date of the insurence policees. Ordinarily the condition mentioned in the insurance policies would be given effect to unless the said condition is impossible of performance or is otherwise waived by the insurance company. It has been held in Ramji Cunamsee Vs. Unique Motor and General Insurance Company reported in 52 Bom. L. R. p-703 that such a condition on the policy of insurance was not a condition precedent and meant only that claims should be preferred to the Insurance Company with all reasonable diligence so that the company may not be put to any extra trouble and expense if the claims were preferred after a long time. In that case, however, the court also relied on another condition in the insurance policy viz: that "this insurance was not ....in force for longer period than 40 days from the date of commencement of this adventure", and held that the above condition in the insurance policy that the claim should be made

be made and preferred within 40 days from the date of the policy was impossible of performance and therefore it was not binding on the party.

Assuming that the said condition in binding on the Government it appears that the insurance company has not taken up the defence in the correspondence that the Government has not filed and proved the claims within 40 days from the dates of the policies. The insurance company has on the contrary by its letters dated 17th May, 1949, 20th May, 1949 and 14th June, 1949, invited documentary proofs in respect of the Government's claims so as to enable the insurance company to finally settle and pay off the claims of the Government. In the said letters the insurance company has not put up its defence about the condition mentioned above and the said letters are also not marked "without prejudice". Under the circumstances it can be said that the insurance company has waived the condition printed on the insurance policies that the claim should be made and proved within 40days of the date of the policy. In this connection attention is invited to Macgillivry on Insurance 1947 Edition ps. 985 - 987.

Under the circumstances I am of opinion that the above concition printed on the policy of Insurance will not come in the way of Government in filing a suit against the Insurance Company.

Sd/- M. P. Amir.

THE ADVOCATE GENERAL OF BOMBAY.

SSD.
17.7.56. 4c.

Office of the R.L.A.

Presumably the Insurance policy is in the Form attached at page 55 ante. It will be seen that the words 'seaworthy native craft' are introduced in the policy by the Insurance Company itself. However even if the words were not introduced, in every voyage policy there is an implied warranty that the ship shall be seaworthy for the voyage when she sails (P. 686 of Arnould on the Law of Marine Insurance and Average. Vol.2 also p. 52 of Law of Insurance in India by K. Venkoba Rao).

It is recited in the policy as follows:-

"The Adventures and Perils which the said Company is contented to bear and does take upon itself in this Voyage, are of the Seas, Men-of-war, Fire, Enemies Rovers, Pirates, Assaoging Thieves, Lettees of Mart and Countermart, Surprisals, and Takings at Sea, Arrests, Restraints and Detainments of all Kings and Princes and Peoples of whatsoever, Nations, Condition and Quality and of all other Perials, Losses and Misfortunes that have or shall come to the Hurt Detriment or damage of the said subject matter of this Insurance or any part thereof, - arising from Perils of the Seas."

From this it appears that the insurance was mainly in respect of the perils arising from the sea. Unless the policy otherwise provides under this clause the insurer is not liable for ordinary wear or tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured or for any loss not caused by marine perils. (p.32 of Law of Insurance in India). Peril of the seas refer only to fortuitous accidents or casualties of the seas. It does not include the Ordinary action of the wind or the waves (p.812 of Arnould on Maeine Insurance). In this case the Tindal has stated at p. 6 ante that at the time of the leakage and consequent sinking of the craft, the position of the sea was rather disturbed owing to the strong North-westerly winds which were blowing during that week. According to the Tindel the cause of the casulty was the sudden leakage from bottom of the vessal which could not be

located owing to full load of cargo which absolutely disallowed the crew to take any measures to stop the leakages. If the vessle was not seaworthy the transport contractor should be held lieble if there is the usual condition in the contract as mentioned at p. 27 ante.

The leakage being at the bottom, no steps could have been taken by the crew even if the cargo was only upto the registered capacity and the blame cannot therefore be attributed to overloading .

However the Insurance Officer has denied that the vessel was unseaworthy and attributed the leakage to disturbed sea owing to strong North-westerly winds. There is no objection at this stage to write to the Company in terms of the Insurance Officer's draft letter at p. 53.

Id/- .....
8/9

Remembrancer of Legal Affairs.

U.R. to F.D., No. G-431, dated the 9th September 1952.

SSD.
17.7.56. 4c.

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